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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,510	08/26/2003	Eun-Hyoung Cho	030681-525	2722
21839	7590	08/23/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			AMARI, ALESSANDRO V	
POST OFFICE BOX 1404			ART UNIT	
ALEXANDRIA, VA 22313-1404			PAPER NUMBER	
			2872	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/647,510		CHO ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
		Alessandro V. Amari	2872	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al US Patent 5,349,471.

In regard to claim 1, Morris et al teaches (see Figures 2, 3 , 4) a hybrid lens comprising a refractive surface (1) that refracts incident light and a diffractive surface (3) that diffracts light exiting the lens, the diffracting surface designed by a sag satisfying the equation recited as described in column 4, lines 11-68, column 5, lines 1-5. Although the prior art does not specifically disclose the claimed equation, this feature is seen to be an inherent teaching of that device since sag is a component of path length and would have to be accounted for in constructive interference at the focal point.

Regarding claim 2, Morris et al teaches that the refractive surface has a low order aspheric profile  $z$  satisfying the equation recited as described in column 6, lines 60-68 and column 7, lines 1-5.

Regarding claim 4, Morris et al teaches that the refractive surface has a numerical aperture above 0.85 as described in column 8, lines 55-56.

Art Unit: 2872

Regarding claim 5, Morris et al teaches that the diffractive surface has a depth  $L_m$  satisfying the recited equation as described in column 4, lines 11-68, column 5, lines 1-65. Although the prior art does not specifically disclose the claimed equation, this feature is seen to be an inherent teaching of that device since the depth is a component of path length and would have to be accounted for in constructive interference at the focal point.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al US Patent 5,349,471.

Regarding claim 3, Morris et al discloses the claimed invention except for that the diffractive surface has a minimum pitch of  $3\ \mu\text{m}$ . It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a minimum pitch, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. One would have been motivated to have a minimum pitch for the purpose of improving the diffraction efficiency of the lens. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meyers US Patent 5,715,091 teaches a hybrid lens having the features recited as described in column 6, lines 24-67, column 7, lines 1-65 and column 9, lines 60-66.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alessandro V. Amari whose telephone number is (571) 272-2306. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/647,510

Page 5

Art Unit: 2872

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18 August 2004

  
MARK A. ROBINSON  
PRIMARY EXAMINER